

**Testimony Regarding the Future of the Wetlands Protection Program to the
House Great Lakes and Environment Committee and
House Appropriations Subcommittee on Environmental Quality
Representative Rebekah Warren, Chair
Representative Doug Bennett, Chair**

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Introduction

Good afternoon Madame Chairperson Warren and Chairman Bennett and Committee Members. Thank you for the opportunity to present testimony today regarding the future of Michigan's Wetlands Protection Program.

We are pleased to be here today on behalf of the board, staff, and over 2,300 members of Tip of the Mitt Watershed Council.

As a means of introduction, the Tip of the Mitt Watershed Council was founded in 1979, the same year Michigan's Wetland Protection Act was passed. The Watershed Council is a nonprofit organization whose purpose is to protect, restore, and enhance water resources, including our inland lakes, rivers, wetlands, ground water, and the Great Lakes. We base all our programs on sound science and policy analysis, and we have garnered respect for our work from local, state, and federal agencies, businesses, fellow environmental organizations, and citizens.

Functions and Values of Wetlands

Wetlands are some of our most valuable resources – they provide homes for wildlife, maintain water quality, and protect us from floods. They are places of beauty that contribute greatly to the overall health of our environment and our quality of life. Although the functions and values that wetlands provide make them our most valuable landforms, the United States and Canada have lost alarming amounts of wetland habitats. According to a study by the U.S. Fish and Wildlife Service, the lower 48 states have lost over 53% of their original wetlands. Great Lakes states and the province of Ontario have fared worse – it's estimated that only 30% of the original wetlands remain in the Great Lakes Basin. Michigan has lost approximately one-half of its wetland resources since European settlement; as a result, the remaining wetlands are ecologically indispensable.

Wetlands Provide Fish and Wildlife Habitat

Wetlands provide critical habitat for fish and wildlife. Nearly all fish in the Great Lakes Basin directly rely on wetlands for spawning, feeding, or taking cover. Waterfowl and other birds, and a wide range of mammals forage, reproduce, and find shelter in wetlands. More than one-third of all threatened or endangered animal species in North America depend on wetland areas. According to the Michigan Natural Features Inventory, of Michigan's total 395 threatened, endangered, rare, or special concern plant species, 194 of them are found in wetland habitats.

Wetlands Protect Water Quality

Wetlands act as living filters that remove pollutants, nutrients, and sediments from surface water and ground water. By protecting water quality, wetlands keep our lakes, streams, and ground water healthy and support the wide range of uses that rely on clean water.

Wetlands Contribute to our Water Supply

Wetlands are usually found where the ground water table reaches or is close to the land surface. They are often sites of springs or seeps where ground water is discharged and are very important for providing high quality water for our lakes and streams. Because wetlands store water and release it slowly, they play an important role in maintaining flow in streams. In addition, some wetlands are found where water seeps back into the earth and recharges ground water, providing a source of clean drinking water. The water recharge potential of a wetland varies according to a variety of factors, including wetland type, geographic location, subsurface geology, soil type, and amount of precipitation.

Wetlands Protect Shorelines and Control Erosion

In their natural condition, wetlands associated with rivers and lakes function as a barrier to erosion. The root systems of wetland plants stabilize soil at the water's edge and enhance soil accumulation at the shoreline. Wetland vegetation along shorelines reduces erosion by dampening wave action and slowing the speed of water currents. When wetland and shoreline vegetation is removed, efforts to control erosion and sedimentation can be expensive and usually result in further degradation of fish and wildlife habitat.

Wetlands Protect Us from Floods

Wetlands act as sponges, temporarily storing flood waters and releasing them slowly, thus reducing flood peaks and protecting downstream property owners from flood damage. Wetlands and adjacent floodplains often form natural floodways that convey flood waters from upland to downstream points. These functions become increasingly important in urban areas where development has increased the rate and volume of stormwater runoff. Each year, many communities that have suffered extensive wetland loss experience severe flooding.

Benefits of the State Administration of the Wetland Protection Program

The state administration the wetland protection program in Michigan offers several benefits in terms of program efficiency and resource protection. These include the following.

Increased program efficiency

The state program can reduce the need for duplicative state and federal permits. This can eliminate potentially conflicting permit decisions. One permit process administered by the DEQ provides authorization under all statutes administered by the Land and Water Management Division including Wetlands, Inland Lakes and Streams, Great Lakes, Environmental Areas, and Floodplain Authority. In addition, it authorizes Section 404 of the Clean Water Act, Section 401 of the Clean Water Act (Water Quality Certification), Coastal Zone Consistency Certification, coordination with endangered species programs, and screening with the federal historic preservation program. All of these authorizations are provided through one permit application and at no additional cost to the permit applicant. Having the federal government administer the

program in Michigan will actually result in a duplication of efforts and resources. Applicants will be required to obtain multiple permits from multiple agencies, increasing time and costs. In other states, an applicant must seek these various authorizations on their own, from both state and federal agencies, and this often requires payment for each process separately.

Improved resource protection

The state program regulates 95.1% of Michigan's wetlands. Sending the program back to the federal government could result in many wetlands not being regulated. Due to Supreme Court cases and administrative federal action over the past few years, at a minimum, approximately 17 percent of our wetlands, over 900 thousand acres, are not clearly regulated by the federal government. Additionally, the state program also covers activities not currently regulated by the federal Section 404 program, such as wetland excavation, dredging, and some drainage activities.

Increased timeliness for applicants

State permits are often more timely than federal permits. In Michigan, completed permit applications typically require action within 90 days (150 days if there is a hearing). The average permit processing time is less - approximately 60 days. The U.S. Army Corps of Engineers has no required timeline for permit review and is experiencing considerable time delays, due to backlog and jurisdictional confusion. Some permit applications are taking 600 – 700 days to review. Additionally, prior to processing federal permits, jurisdictional determinations (JD's) are required to determine if the water in question is protected under the Clean Water Act. The current turnaround time for approved JD's is averaging 90 days, the same amount of time it takes the DEQ to typically process a permit. If the wetland program is returned to the federal government, we will likely see job losses in Michigan as a result. In addition to "green" jobs lost by MDEQ employees, other jobs will be lost from delayed or missed business development opportunities due to a lengthy and burdensome federal permit process.

Improved resource management

DEQ staff is often more familiar with local resources and the regulated community. The state program offers more staff at local field offices, capable of providing more thorough, on-site reviews for most permit applications. This provides the opportunity to work directly with permit applicants to reduce adverse impacts to the resource.

Integration of wetland management with other state water resource program Administration of the wetland program at the state level encourages integration of wetland regulations with related land and water management programs. Issues such as floodplain management, stormwater management, local or regional zoning or land use plans are more likely to be fully integrated into the permit review process.

State specific resource policies and procedures

States have a degree of flexibility in the selection of policies and in procedures that are best suited to the needs of the state. For example, Michigan has developed a wetland delineation manual that is suited to its climate and topography, rather than using a manual developed for the entire nation; and states can use functional assessment procedures specific to the ecological types of wetlands present within the region.

Increased regulatory program stability

Since Michigan's program relies on state, rather than federal law, it is not impacted by changes in the federal program unless those changes render the state program less stringent than its federal counterpart. Therefore, numerous changes that have resulted in a significant degree of controversy and confusion at the federal level have not directly impacted Michigan's program (e.g., revision of the delineation manual, rule changes following the Tulloch and SWANCC decisions, and more recently the Rapanos decision and federal guidance).

Unanswered Questions

In addition to making sure that costs and benefits are carefully evaluated, we have even greater concerns about many unanswered questions surrounding this proposal.

Because we work on wetland issues every week, including review of dredge and fill permit applications for our region, the Watershed Council has dedicated significant time and energy to determining the actual consequences of this proposal. We examined what this will mean to not only our vital wetland resources, but also to the DEQ, the Corps, and to permit applicants from the regulated community – and please remember that the regulated community includes individuals with wetlands on their property, and those of us who do restoration work in wetlands, in addition to farmers and business interests who rely on permits to implement economic development steps. We are also examining potential alternatives and options we believe were not fully considered by the DEQ and Governor's office. Through all of this intensive work, we conclude that too many unknowns exist for the State to proceed with this proposal at this time.

How will this impact DEQ Staff?

No one has been able to say yet how many DEQ staff will be impacted if the wetland protection program is returned to the federal government. DEQ tells us that 33 FTE are directly impacted, but that does not mean layoffs, necessarily. The majority of the staff in Land and Water Management does not work exclusively in the wetland program, making this answer difficult to predict, but that is exactly our point. If the majority of staff in LWMD will continue to work on other remaining statutes, how many will really be laid off? If none, then where do the savings come from?

DEQ explains that staff would be shifted to work in other areas, and their salaries would be covered from other funds, allowing them to take \$2.1 million and send it back to the General Fund. Given the dire consequences of doing this, we believe other solutions and ways to shift employees should be explored. Especially in light of our next question, which is:

What are the replacement costs?

The Clean Water Act gives states the authority to veto or place conditions on federal actions that may result in water pollution. Specifically, Section 401 requires that any application for a federal permit that could result in a discharge to waters must first obtain certification from the state. This is a consideration because impacts on existing wetlands could result in increased water pollution if the wetland is destroyed or diminished. Given this requirement, DEQ cannot simply repeal 303 and just walk away from wetlands, all together.

Currently, 401 certifications are incorporated into the existing wetland permit review process. However, if the state wetland protection program is gone, the DEQ will need to develop a 401 certification program in lieu of our current program. How will the state process 401 certifications and what will it cost to design a program? Additionally, how many staff will be needed to implement this new program? We assume our new program would be something more than a staff member in the corner with a rubber stamp, given what neighboring Great Lake states do. For example, 401 certification staff in both Ohio and Wisconsin includes well-trained wetland experts. So, will we need the same number of staff that currently administers our wetland protection program? Are we simply replacing one regulatory process with a new regulatory process? DEQ has not yet explained how this will be done.

What are the transactions costs?

If the wetland program is to be returned to the federal government, Michigan must provide the transfer of information, including all permits, permit files, permit applications, and other information. If the Corps were to take over administration of our wetland program, they would also need detailed information about all active permits, since they will be responsible for compliance. Moreover, to administer a permit program, they need to know where permits have been issued in the past to differentiate from violations, so they would also need copies of old files. Additionally, they would need information on enforcement activities. This transfer requires a considerable amount of time, effort, and monetary resources. Specifically, how much? No one knows.

What protections do we lose?

Due to Supreme Court cases and administrative federal action over the past few years, there is confusion over what waters and wetlands are protected by the federal Clean Water Act. It is impossible to determine exactly what wetlands and waters will lose protections if the program is returned to the federal government. The scope of federal jurisdiction over isolated waters and wetlands is made using case-by-case findings of a connection to waters used for interstate commerce. The following categories of wetlands would not automatically be protected; instead, they would need case-by-case jurisdictional determinations: isolated wetlands not physically connected to lakes or streams – which is over 900,000 acres of wetlands in Michigan; wetlands adjacent to streams that are not relatively permanent; wetlands that are adjacent to, but not directly abutting, relatively permanent streams; and wetlands that are adjacent to isolated lakes and ponds.

What preservations do we lose?

The DEQ has approximately 20,000 acres of wetlands held in conservation easements. With this proposed change, the DEQ may not be able to ensure permanent preservation of these wetlands. The Corps is unable to hold conservation easements, so they certainly could not guarantee protection in perpetuity, but no one knows at this time what would come of the wetlands currently in conservation easements. Additionally, there is also the issue of how pending wetland mitigation and enforcement cases will be handled. These issues must be worked out, and we need to understand exactly what will be done to justify the savings being asserted.

The Future of the Wetland Protection Program in Michigan

2009 marks the 30th Anniversary of Michigan's Wetland Protection Act. We should be celebrating this momentous occasion and Michigan's proud tradition and leadership in protecting part of what makes Michigan great – our natural resources.

Budget cuts and subsequent staff reductions have threatened the DEQ's ability to uphold the state's constitution and administer laws that regulate activities affecting our treasured natural resources. The Department has seen state general fund support erode from a high of over \$101 million in FY 2002 to \$44.4 million in FY 2009, representing a 68 percent reduction in general fund support. Despite these cuts, they have managed to maintain a wetland permitting program that is minimizing adverse impacts to the aquatic resources while still approving permits in a timely manner. This should be considered a success story. That being said, we also recognize there is room for improvement.

For our part, the Watershed Council is committed to working with Senator Birkholz and other legislators to identify alternative solutions that both ensure our vital wetland ecosystems are protected, and minimize the regulatory burden. We already have numerous suggestions and ideas about how to do so, and we remain committed to seeking long-term stable funding for the DEQ.

Thirty years ago, members of Michigan's legislature recognized the value of our wetland resources and enacted a wetland program that made Michigan a national leader in wetland protection and management. Today, you have an opportunity to build upon that legacy and maintain the state's role in protecting our vital wetlands. As we continue to lose wetlands in Michigan, the functions that they provide will continue to increase in value. If we are able to protect and wisely manage our wetlands, future generations will be able to experience, and surely find value in, the leap of a largemouth bass on the end of their line, abundant game in marshes and swamps, and high quality water resources for a variety of uses.

Conclusion

On behalf of the board, staff, and members of Tip of the Mitt Watershed Council, we thank you for the opportunity to share these thoughts with you.